

Special Civil Application No 6595 of 1989

Date of decision: 08th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

DUDHIBEN LIMBABHAI
vs
COMPETENT AUTHORITY

Appearance:

Shri J.R. NANAVATI, Advocate, for the Petitioner.

Shri D.N. PATEL, Assistant Government Pleader, for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA
08th February 1996

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 20th June 1985 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 17th April 1989 in Appeal No.Rajkot-88 of 1985 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 9494.06 square metres.

2. The facts giving rise to this petition move in a narrow compass. The predecessor-in-title of the present petitioners filed his declaration in the prescribed form under section 6 (1) of the Act with respect to his holding on behalf of his joint Hindu family within the urban agglomeration of Rajkot. It was duly processed by respondent No.1. After observing all the necessary formalities according to law, by his order passed on 20th June 1985 under section 8 (4) of the Act, the holding of the declarant was declared to be in excess of the ceiling limit by 9494.06 square metres. Its copy is at Annexure-A to this petition. It appears that thereafter the declarant died. His heirs and legal representatives thereupon carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Rajkot-88 of 1985. By his order passed on 17th April 1989 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-B to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. It is not necessary to examine the merits of this case at this stage for the simple reason that it transpires from the order at Annexure-A to this petition that out of one parcel of land bearing survey No.410 admeasuring in all 6 acres 04 gunthas (24,686 square metres), an area of 14,366 square metres (3 acres 22 gunthas) was permitted to be retained under section 21 of the Act and the remaining area of 10,320 square metres (2 acres 22 gunthas) was agricultural land. It transpires from the report made on 1st March 1985 by the concerned officer, in one part thereof a brick kiln was found. That is however not material. What has to be seen is whether or not agricultural operations were carried on therein on the date of coming into force of the Act and

its situation in the master plan, if any, answering its definition contained in section 2 (h) of the Act. It would be necessary for the purpose of ascertaining applicability or otherwise of the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF U.P. reported in AIR 1993 Supreme Court at page 2465 which has been relied on by learned Advocate Shri Nanavati for the petitioners in support of his submission that it should be excluded from the holding of the deceased.

4. It transpires from the material on record that one plot bearing No.21 in survey No.475 was a residential house together with some land appurtenant thereto in all admeasuring 464.04 square metres. This will have to be excluded in view of the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 Supreme Court at page 1567 if it was in existence as an authorised construction prior to coming into force of the Act.

5. It appears that on the land situated on the Godown Road also one house property was found in existence. It will also have to be excluded from the holding of the deceased in view of the aforesaid binding ruling of the Supreme Court in the case of MEERA GUPTA (supra) if it was in existence as an authorised construction prior to coming into force of the Act.

6. It may be mentioned at this stage that learned Assistant Government Pleader Shri Patel has kept an officer from the office of respondent No.1 present with the record of the case. It transpires from the material on record that the deceased filed his declaration presumably in his capacity as the Karta of his joint Hindu family. He has also specified therein the names of persons having interest in the properties declared therein. It appears that no separate units are granted for major sons in the family presumably by treating members of the family as an association of persons. In view of the binding Division Bench ruling of this court in the case of CHHAGANLAL TRIKAMDAS THAKKAR v. COMPETENT AUTHORITY, RAJKOT reported in 1994 (1) Gujarat Current Decision at page 1, members of a joint Hindu family cannot be treated as an association of persons. This aspect will also have to be considered by the authorities below after remand.

7. In view of my aforesaid discussion, the impugned orders at Annexures-A and B to this petition cannot be sustained in law. They have to be quashed and set aside.

The matter will have to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

8. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 20th June 1985 at Annexure-A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 17th April 1989 in Appeal No.Rajkot-88 of 1985 at Annexure-B to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

#####